

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ROYAL INSURANCE COMPANY
OF AMERICA, et al

Plaintiffs

vs.

Civil Action No. 00-2128

LATROBE CONSTRUCTION COMPANY

Defendant

PROCEEDINGS

Transcript of Nonjury Trial on Wednesday, May 3, 2006, United States District Court, Pittsburgh, Pennsylvania, before Honorable Francis X. Caiazza, District Magistrate.

APPEARANCES:

For the Plaintiffs: Bruce Fox, Esq.

For the Defendant: Mark Gordon, Esq.
Timothy Smith, Esq.

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Proceedings recorded by mechanical stenography. Transcript produced by computer-aided transcription.

I N D E X

PLAINTIFF WITNESS DIRECT CROSS REDIRECT RECROSS

DIANNE LEGER

By Mr. Fox
By Mr. Gordon

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DEFENDANT WITNESS

DIRECT CROSS REDIRECT

GERALD CHIMENTI

By Mr. Gordon 36

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PROCEDEDINGS

2 Court convened on Wednesday, May 3rd, 2006, at 9:45 a.m.)

3 THE COURT: Okay. Good morning, ladies and
4 gentlemen. Mr. Fox.

5 MR. FOX: Your Honor, I would like to call Dianne
6 Leger.

7 THE CLERK: Good morning.

8 THE WITNESS: Good morning.

9 THE CLERK: Please raise your right hand.

10 || ★ ★ ★ ★ ★

11 Dianne Leger, having first been duly sworn,
12 testified as follows:

13 THE CLERK: Please be seated.

14 DIRECT EXAMINATION

15 BY MR. FOX:

16 Q Good morning, Ms. Leger.

17 A Good morning.

18 Q Could you just refresh us what your position is at
19 Royal?

20 A My current position is a TPA, or a third-party
21 administrator relationship manager. I manage third-party
22 administrators who are handling our claims. I manage the
23 business side of that proposition.

24 THE COURT: All right. Ms. Leger, I suggest you
25 either move forward or bring the microphone closer to you,

1 please.

2 THE WITNESS: Is that better?

3 THE COURT: Can everybody hear?

4 MR. FOX: Yes.

5 THE WITNESS: The chair doesn't move.

6 Q Ms. Leger, can you describe how loss runs are generated
7 for Royal?

8 A Loss runs are generated from data extracted from our
9 live claim handling system called CLASS. I can't remember
10 what that stands for, but it's C-L-A-S-S. It will extract
11 the financial data. It will extract the name of the
12 adjuster. It will match it with a telephone number for the
13 adjuster, dollars amounts, types of payments in total, name
14 of the claimant, date of loss; that type of information.

15 Q Does Royal have internal controls which relate to the
16 loss runs?

17 A Yes, we do.

18 Q Can you describe them, please?

19 A From a system's standpoint, we have five different data
20 audits that were done every month where they will -- you
21 know, what do you call it? At random, select various claims
22 to check to see what came out on the loss run versus what's
23 showing up, what's in CLASS. They have all of the
24 Sarbanes-Oxley controls in place. There are external
25 reviews, other things that were done, but I don't know how

1 much you need.

2 Q I was asking you about internal controls.

3 Is there a claim audit team that performs an audit?

4 A Yes.

5 Q Internal?

6 A Well, there are peer reviews done where, first of all,
7 claim adjusters do a self-audit through their own files.
8 Then they do peer audits where they will look at each other's
9 files and validate the information that is in the file, the
10 payments that have been made, the strategy for closing the
11 claim or disposition plan, what the handling techniques are
12 to make sure that things are done well.

13 Each manager, claim manager is required to review
14 ten files every month for every adjuster on staff to do a
15 physical review looking for all of those same things. We
16 have a claim audit team that audits each claim office once a
17 year.

18 They will be looking for basically the same thing
19 the manager looks for. And then we have internal audit,
20 which is -- reviews all different functions within the
21 organization, but they concentrate primarily on financial
22 transactions. They will take a large sampling of claims and
23 make sure that every payment that's showing up in the system
24 has a back-up document in the file and has been validated,
25 that they are coming out the same, and they will check that

1 against the loss runs, that sort of thing.

2 Q Are there system controls in place, as well, at Royal?

3 A There are -- if I can look at this. At a high level --

4 Q You are looking at your notes on that subject?

5 A These are my notes on just quick, high level. You have
6 to have two different people involved in the transaction to
7 issue a check to make a payment. One person does the entry.
8 Another person has to do the authorization sign off. There
9 are controls. There are delegated authorities, dollar levels
10 and payment types that each adjuster and manager throughout
11 the organization has.

12 The system has a control in place that you can't
13 exceed your authority. It will not let you enter or
14 authorize something unless you have been granted that
15 authority.

16 There is an error report that has to be run by --
17 two error reports actually, that have to be run by every
18 manager every week, and every error has to be addressed and
19 corrected.

20 Q What are the nature of the errors that are covered by
21 the error report?

22 A The error reports will cover everything from dollar
23 amounts that didn't match, what came through what we call a
24 bill review. There is a vendor that we use that authorizes
25 medical payments. It will take the medical bills and it will

1 match them and limit them at whatever the statutory fee
2 schedule is for any particular state.

3 And if anything doesn't match, the error report
4 will kick out and it will have to be addressed and corrected.

5 Miscodings, if something that's clearly a medical
6 payment is coded to indemnity, it will kick it out.

7 Q If it is miscoded on a loss report?

8 A Yes.

9 Q Does Royal have a system of external audits to insure
10 that the information it maintains is accurate?

11 A We do. We have our independent auditor who is hired to
12 review our entire organization every year. Our reinsurance
13 treaty panel will come in and audit our claim files to make
14 sure that the payments are appropriate, that we are handling
15 the files correctly, that we are disposing them in a
16 reasonable and equitable fashion.

17 Each of the states that we do business in, which is
18 all fifty states, will come in and do market conduct reviews.
19 Every state sets their own schedule for how often they review
20 a carrier.

21 Most of them review a carrier every two to three
22 years unless you have a very high volume in a particular
23 state. Like we had a very high volume in Pennsylvania, the
24 state of Pennsylvania came in and reviewed our claim files.
25 And it's a random selection. Whatever files they pick, we

1 have to produce. They go through it, but they would come in
2 at least once every eighteen months.

3 Q Is Royal on any regulatory watchlist for poor or
4 inadequate claim handling?

5 A No, we are not.

6 Q Is Royal on any reinsurer's watchlist for poor claim
7 handling?

8 A We are not on any reinsurer watchlist for our direct
9 handling. We have a couple of third-party administrators who
10 are handling some claims that some of the reinsurers have
11 decided they want to watch them and they have put them on a
12 watchlist.

13 Q Has the IRS conducted any extensive reviews of the Royal
14 organization?

15 A The IRS came in and they spent the last two and a half
16 years -- in fact, they just completed -- I think it was about
17 eight weeks ago -- completed their review of everything
18 that's gone on in the organization for the last eight years
19 and they walked out. We have got a clean record. They
20 reviewed every financial transaction. Everything that went
21 on.

22 Q As a consequence of all the internal control systems,
23 system controls, external audits and regulatory review that
24 you describe, are you aware of any problems with Royal's
25 database and its generation of loss control data?

1 A No.

2 Q Have you had the opportunity to review the Freed file?

3 A I reviewed a limited amount of information that was
4 available to me. But, yes, I did.

5 Q And what did you conclude from your review?

6 A What I concluded from my review was that, I believe
7 Mr. Gordon had misread our loss run, that he thought we were
8 taking a credit against expenses rather than, you know,
9 giving a credit that would have applied to maybe a reduction
10 in the claim value that could have benefitted his claim.
11 But, what was there was, in fact, a recovery. It was coded
12 as a recovery. And I believe the coding --

13 MR. GORDON: For the record, I accepted that
14 yesterday, Your Honor. I have reviewed that as an expense.
15 And when it was pointed out that it was under a recovery
16 column underneath expenses, I would agree.

17 Q Let's move on to the Augustine file.

18 Have you reviewed the Augustine file?

19 A Yes, I did.

20 Q What have you determined?

21 A I determined that the file was, in fact, closed, a
22 settlement had been reached and that the file reopened four
23 months later. He was re-treating for the same injury.

24 Q And what was the results of that?

25 MR. GORDON: Your Honor, these are based -- Your

1 Honor --

2 MR. FOX: Your Honor --

3 MR. GORDON: Your Honor, this goes beyond -- this
4 is apparently some type of claims review documents that have
5 not been provided. She is not a claims expert. And so if
6 she is going to explain to us what she reviewed, at least we
7 should have the documents that were reviewed.

8 MR. FOX: Your Honor, Mr. Gordon can testify as an
9 expert. I suppose that's all right, but, we can't respond
10 with our witness who has knowledge of the claims files.

11 THE COURT: Did he testify as an expert in this
12 case?

13 MR. FOX: I thought he was effectively yesterday,
14 Your Honor.

15 MR. GORDON: Your Honor, I just indicated that the
16 documents that were provided can't reconcile any of the
17 claims. No one has bothered to reconcile on eight hundred
18 claims paid versus what's been established in 2002 loss runs.
19 That's the point I made yesterday.

20 No one has presented evidence on that issue.

21 MR. FOX: Your Honor, Mr. Gordon has attacked our
22 analysis on the claim basis that these few files had
23 correct -- were incorrectly reflected in the loss runs. We
24 have a very simple explanation for that.

25 As Your Honor stated yesterday, we are simply

1 trying to clear up the record, and this is really just a
2 quest for truth on this issue.

3 MR. GORDON: Your Honor, I don't know that. How do
4 I cross-examine when there are no exhibits?

5 THE COURT: Let's see where he is going with this.
6 The objection is overruled.

7 BY MR. FOX:

8 Q Could you continue with your answer regarding the
9 Augustine file and what you determined?

10 A I determined that the file reopened in January,
11 January 17th, I believe, 1997, for recurring treatment, and
12 payments were made for this recurring treatment.

13 There were, it looked like payments made for Court Reporters,
14 further legal investigation, and ultimately the file was
15 closed in April of 2002. 2000. There were additional
16 payments made.

17 So, the monies that were showing up in the system
18 were, in fact, accurate.

19 Q Okay. Did you review the Younker's file?

20 A Yes, I did.

21 Q What did you determine from your review?

22 A I determined from my review that, also, his attorney had
23 withdrawn the claim, which I think was already established,
24 saying he couldn't make a causal connection of some sort.

25 The claim was reopened two weeks later with a note in the new

1 reserves that just said, new attorney, new doctor, causal
2 relationship, and the file was handled and went forward from
3 there. I don't know how it was handled, but there were
4 payments made.

5 Q Thank you.

6 MR. FOX: I have no further questions.

7 CRCSS-EXAMINATION

8 BY MR. GORDON:

9 Q When did CLASS come into operation?

10 A The CLASS system was built in 1983, 1984. It came on
11 line sometime in 1984. There were -- if I may finish. There
12 were several large clients like Latrobe that we did not
13 immediately move into CLASS. We continued handling them
14 in -- and I forgot the name of the system that we had at that
15 time. They were handled in that system and then they were
16 migrated into CLASS sometime in the late eighties.

17 Q And when did you become -- I think now -- you now have a
18 TPA directorship, is that right?

19 A Yes.

20 Q Before that, you were an underwriter?

21 A Yes.

22 Q When did you move from underwriting to the third-party
23 segment?

24 A In August 1st of 2005; last August.

25 Q And the documents -- you had indicated I think before

1 that financial data -- well, let me ask it another way:

2 Prior to 2005, any inquiries regarding the
3 financial components of the program you said had to be
4 referred to another department, is that right?

5 A No, not the financial components of a program.

6 Q Well, didn't you indicate that, in terms of establishing
7 what was paid and credited and what was billed, that you had
8 to go to a different department?

9 A I said if you wanted to know why it was done, you would
10 have to go to -- you would have to go to a claim handler or a
11 claim expert to find out why it was paid.

12 Q If Augustine, what did you review in the Augustine file?

13 A What I reviewed was a limited amount of electronic data
14 that's available in CLASS which told me the amount of
15 payments that had been made. And in cases where we issued a
16 check, as opposed to a journal entry, it would tell you the
17 name of who was paid.

18 Q You didn't review the file itself?

19 A I did not review the physical file, no.

20 Q And so you can't tell us today whether the \$120,000 or
21 so on indemnity that was shown on the 2002 loss run are
22 reflected on actual payments in the claim file, can you?

23 A I can tell you that a check was physically issued.

24 Q I know that.

25 A And the check number and who it was made out to, that it

1 was made out to the claimant and the dollar amount.

2 Q But, you can't determine -- for instance, you just know
3 that checks were paid out on a claim, you don't know whether
4 or not they can be reconciled with the loss run because you
5 don't have the file?

6 A Well, I do know that what shows up on the loss run is
7 exactly what's in CLASS because I did compare the two
8 numbers.

9 Q Was CLASS -- so, you know that money was paid?

10 A Yes.

11 Q But, you don't know precisely why it was paid? You
12 can't tell us whether it was paid properly or improperly
13 because you haven't looked at the claim file?

14 A That would be probably an accurate statement.

15 Q And you had indicated before when we had looked at
16 Freed, that the issue with Freed is that -- and I am looking
17 at it right now -- it was \$15,946 that was payable, but the
18 loss run shows \$16,515.

19 You didn't attempt to reconcile that?

20 A No. I thought your issue was the expense, period.

21 Q Did you know that in the Younker case that the benefits
22 that were paid out in Younker were paid out on a 1999 claim
23 and not a 1995 claim?

24 A I am sorry?

25 Q You said that Younker opened up again?

1 A Yes.

2 Q Did you know that the benefits were actually paid out on
3 a date of injury of 1999, not 1995?

4 A I took the claim number from the loss run that you asked
5 about and that was what I reviewed.

6 Q But, you never saw the file to figure out what injury
7 was being paid for, did you?

8 A No, not beyond what I told you.

9 Q And, in fact, did you know that you could ask the Bureau
10 to send documentation on decisions?

11 A Yes. In fact, most bureaus have a website you can go
12 into and pull it up yourself.

13 Q Right. And I want to show you a document, okay, that
14 indicates what it is that you folks paid under --

15 THE COURT: Let's mark that at least for
16 identification purposes.

17 MR. GORDON: Yes. At for identification purposes,
18 it would be AY, Your Honor.

19 BY MR. GORDON:

20 Q And I ask you to look at -- this is the CLASS system.

21 Was this case handled under the CLASS system?

22 A Yes.

23 Q If the findings of fact, first finding of fact, which
24 would be found on page three of the decision, could you read
25 into the record what the injury was that Royal was paying

1 for?

2 A What part of this do you want me to read?

3 Q Paragraph one of the finding of fact.

4 A On February 14th, 2001, the claimant suffered an injury
5 in the nature of death from silicosis/occupational lung
6 disease.

7 Q And the payments that are documented in this settlement
8 agreement, would this be reflected in the final loss run
9 establishing what was paid out in 2002 to Mr. Younker?

10 In other words, the benefits here that are awarded
11 via settlement agreement would be reflected in your loss run,
12 would it not?

13 A They should be if we paid the entire settlement.

14 Q Right. But, it's reflected as a 1995 injury claim and
15 the Court indicated that the injury was in 2001.

16 A No. The Court -- excuse me. The Court indicated that
17 he suffered death in 2001 --

18 Q Okay.

19 A -- and an occupational disease injury, and I know this
20 as an underwriter.

21 Q Right.

22 A In an occupational disease injury, it will vary by
23 jurisdiction. Sometimes it is over the period of time that
24 you worked for the organization. Some states it's the last
25 date that you worked in the exposure. Death and the injury

1 on occupational disease don't always occur at the same time.

2 Q And, in fact, it's a good point. The other case was
3 withdrawn on causal connection.

4 I am going to show you what I have marked as
5 Exhibit AZ. And this is the refiling of a claim from which
6 the death case was paid out. And would you read paragraph
7 one into the record?

8 A Charles Younker, Sr.?

9 Q Yes.

10 MR. FOX: Could the witness have a moment to review
11 the document rather than just read a paragraph into the
12 record?

13 MR. GORDON: Sure.

14 THE COURT: No problem.

15 MR. FOX: I note that neither document was marked
16 as an exhibit.

17 THE COURT: I believe it has been marked for
18 identification purposes, is that right?

19 MR. GORDON: It has, Your Honor.

20 The first Exhibit I showed her was AY, which is the
21 settlement, and the second is the claim that led to the
22 settlement.

23 THE WITNESS: This findings of fact, paragraph one,
24 says:

25 On September 30th, 1999, the claimant suffered an

1 injury in the nature of silicosis/occupational lung disease
2 from exposure to silica and dust.

3 Q Now, Ms. Leger, you said that you reviewed financial
4 data?

5 A Yes.

6 Q And that financial data would establish for us what was
7 paid on the 1995 claim. Do you have that with you?

8 A What?

9 Q The financial data that shows what was actually paid out
10 on the Younker claim.

11 A No, I don't.

12 Q You said you reviewed it?

13 A I reviewed it on line.

14 Q And do you remember how much was paid out?

15 A I did not write that down. Well, let me -- I think the
16 loss runs are in here. And I do remember checking to see
17 what was on the -- what is on the loss run. Well, here it
18 showed a reserve.

19 I don't remember the specific dollars, but I know
20 it's closed pretty close to the reserves.

21 Q Right. The amount of payment on the Younker claim was a
22 six-year -- according to the settlement that was reached, for
23 a 1999 injury, was an amount that would pay the claimant six
24 years under some type of a structured settlement at the rate
25 of 46376.

1 And if I told you that that is the amount of money
2 in your CLASS system, would you accept that, or you don't
3 know?

4 A I don't know. I don't have the system in front of me
5 right now.

6 Q And the reason -- so, you don't know actually what's
7 been paid out. Even if this were a 1995 claim, you can't
8 tell us today whether the amount of money in the system
9 reflects what was awarded, can you?

10 A Not without opening up a computer and dialing in and
11 looking in the system, no.

12 Q And if the benefits were paid for the 1999 injury, which
13 appears to be the case, you would have no way of
14 understanding how that would have found its way into the 1995
15 loss run?

16 A No. But this -- this would look like, based on the fact
17 that this is addressed to both Rockwood and Globe Indemnity,
18 that this covered multiple years and probably ended up being
19 shared.

20 Q You can share an occupational disease claim in
21 Pennsylvania?

22 A I don't know in Pennsylvania. In most jurisdictions,
23 absolutely.

24 Q You didn't insure Latrobe in 1999, did you?

25 A No, we didn't.

1 MR. GORDON: Your Honor, I would offer into the
2 record AY and AV.

3 MR. FOX: No objection, Your Honcr.

4 THE COURT: The offers are admitted.

5 Q Now, you indicated that you had all of these audits put
6 in place. I take it, that was the result -- the independent
7 audit all came as a result of Sarbanes?

8 A No. No. Those have been in existence for as long as I
9 have been with Royal. What Sarbanes obviously did for us is,
10 actually make us do a better process of documentation in
11 maintaining the records.

12 But, these audits had always been done.

13 Q Now, audits were done because mistakes were made and
14 they had to be found and corrected, is that correct?

15 A Audits are done to find mistakes because we are all
16 human and occasionally we make mistakes.

17 Q And you didn't have a checklist to find out which files
18 were actually reviewed of Latrobe's between 1974 and 1995 and
19 to determine whether they were audited and whether mistakes
20 were found?

21 A No, I did not. I wasn't --

22 Q You weren't part of that team and it wasn't your role up
23 until 1995 -- until 2005, correct?

24 A Yes.

25 Q And who were the individuals that correlate whether or

1 not payments in a program correlate to loss reserve data? Who
2 as of 2005?

3 MR. FOX: I am going to object. I don't think the
4 question is understandable.

5 THE COURT: Do you understand the question?

6 THE WITNESS: No, I don't.

7 BY MR. GORDON:

8 Q Who were the individuals at Royal that attempted to
9 correlate whether or not the amounts that are documented in
10 the claim files as actually paid and payable are accurately
11 reflected in the loss runs? Who are those individuals?

12 A By name?

13 Q Yeah.

14 A Well, let's see. There is a system team, an audit team
15 in systems that will look to see that what's shown in CLASS
16 is showing up in the loss runs. And there is internal audit
17 that does the same thing. They kind of look over what
18 systems does and they look over their own stuff and they look
19 deeper into the claim files.

20 Q Are you a part of that team?

21 A No.

22 Q Who else will do that?

23 A Let's see. I am trying to think. It was Tony
24 Simone (Spelled Phonetically) and Bruce Miller were managing
25 that. They've both gone in the last two months. So, it's

1 Melkeena (Spelled Phonetically) Little. I know I am going to
2 leave off a lot of names. I will just try to hit the
3 managers, if you will. Internal audit, it's David
4 Pacer. (Spelled Phonetically).

5 Q You are not part of the internal audit team?

6 A No.

7 MR. FOX: I think the witness was completing her
8 answer when she was interrupted with the last question.

9 THE COURT: I don't think so. Do you have anything
10 else to say?

11 MR. FOX: I just thought she was identifying the
12 list of people.

13 BY MR. GORDON:

14 Q Ms. Leger, do you recall being deposed in August of '03?

15 A Yes.

16 Q And did you recall getting a list of documents that you
17 were to bring with you per the notice of deposition?

18 I show you what's been marked as AX.

19 MR. FOX: Can I have a copy of that?

20 A Yes, I do remember this.

21 Q And did you tell -- at the time you were deposed, do you
22 recall telling us that you had come onto this account
23 sometime, as an underwriter, in '93 or '94?

24 A Yes. In '94, I believe, but it could have been '93.

25 Q Okay. And do you recall that your impression was that

1 Bruno Ferrari, Sr., was a hands-on guy?

2 A Yes.

3 Q And did you learn from Mr. Fox that for several years,
4 we were trying to secure from Royal documents that would
5 confirm payments and credits to Latrobe?

6 MR. FOX: I am going to object to a question which
7 calls for communications with my client. Attorney-client
8 privilege.

9 MR. GORDON: Well, Your Honor, I think she already
10 testified at the deposition that she was told that there was
11 an effort to try to get confirmation of what had been paid
12 and credited to Latrobe.

13 THE COURT: All right. The objection is overruled.

14 Q Do you recall that?

15 A Yes.

16 Q And you were aware also that Mr. Ferrari had died in
17 2000, the hands-on guy?

18 A Yes. Well, I didn't know when he died, but I knew he
19 was --

20 Q About that time?

21 A I didn't know when he passed.

22 Q And part of our ongoing effort to get the payment
23 information that Latrobe had paid between 1974 to 1995 was
24 specifically requested of you per the deposition notice, is
25 that right?

1 A Confirmation as to the amount of premiums paid by
2 Latrobe Construction, is that what you are asking about?

3 Q Yes.

4 A Yes.

5 Q Right. And at the time -- well, let me digress for a
6 moment.

7 Without information confirming the extent for which
8 premiums were earned, received by or on behalf of an insured,
9 would you agree that you can't calculate what the claim is
10 for outstanding premiums?

11 A I'm sorry?

12 Q Sure. I will take it slowly. If you don't have
13 information regarding what premiums were earned, what was
14 billed and what has been paid by or on behalf of an insured,
15 you can't indicate how much premium is due?

16 A This is a general question?

17 Q Yes.

18 A I probably have to say yes.

19 Q Okay. Good. In response to my request for documents
20 that verified what had been paid or credited, either from the
21 insured directly, the broker, a factor, or any draw-down, did
22 you indicate that that was an issue that we would need to
23 deal with at Royal's Premium Accounting Service Center?

24 A I said that was where the records were kept.

25 Q And did you, in preparation for your deposition,

1 indicate for us that you had contacted them and that you had
2 received a record that was purportedly sufficient to satisfy
3 that request, a record which is referred to as the summary or
4 statement of outstanding account, summary of statement of
5 outstanding account?

6 A Is there a document you are referring to?

7 Q Sure. I'd refer you to -- what is this, the exhibit --

8 I am going to show you what was previously marked
9 at your deposition and which we now refer to as
10 Defendant's BA.

11 Do you remember providing that to us in your
12 deposition?

13 A Yes, I do. It is called Statement of Account for
14 Latrobe Construction.

15 Q And you heard Mr. Chimenti testify that he has relied
16 upon that document to address what's been earned, paid and
17 credited, et cetera?

18 A He relied on this to determine what we said was still
19 outstanding.

20 Q But, I think it is fair to state that that document
21 doesn't address for us what was actually paid and credited,
22 does it?

23 A No. What this indicates is what we said has not been
24 paid to us.

25 Q But, the information that we requested that is the proof

1 of actual payment, the premiums by or on behalf of the
2 insured by -- through a draw-down, you indicated was not
3 available?

4 A That's true. You were asking us to go back to the
5 1950's.

6 Q You did not?

7 A Can't do it.

8 Q No. We said 1974 through 1995.

9 A In 2000, you couldn't go back to 1974. Why would we
10 keep those records if we didn't feel there was any money
11 outstanding? Or let me rephrase that.

12 It is not, why would we keep those records? We
13 don't have those information -- that information in any
14 readily available, easy format. It would -- if we had it, if
15 the documents had not been destroyed, it would have taken an
16 army of ten thousand to even search and find it.

17 Q But, you told me that there were premium ledgers?

18 A There are premium ledgers in an electronic version that
19 are not printable, yes. And in our premium ledger, they
20 reconciled it and came up with, this was what we billed, this
21 is what we paid, this is what was paid and credited.

22 Q And who prepared that document? Do you know that?

23 A Would have done in premium accounting.

24 Q But, you don't know who did it?

25 A Which year?

1 Q Well, that's just a summary. That's not an -- that's a
2 summary that was prepared for this case, wasn't it?

3 A Yes.

4 Q That's not a regular business document of Royal, is it?

5 A We prepare this type of summary very often for our
6 clients when they ask for it, yes.

7 Q Well, it was prepared for this litigation. It was based
8 on a review of corporate documents?

9 A Yes. Corporate records.

10 Q Corporate records?

11 And we had asked for the production of the
12 corporate records.

13 A We produced what we could.

14 Q But, so you just produced a summary that someone
15 provided from corporate documents, but the corporate
16 documents were never produced by you since the deposition?

17 A Correct.

18 MR. FOX: I am going to object, for the record. I
19 don't think this witness necessarily has knowledge of
20 everything that was produced in this case.

21 We have had multiple productions, boxes of
22 documents over a series of years and --

23 MR. GORDON: Your Honor, I am going to offer
24 Ms. Leger's testimony in this case by way of deposition, in
25 addition to this cross-examination, to establish that when we

1 asked for this documentation, they told us there were premium
2 ledgers. They indicated that if they had them, they would
3 produce them for us. And Ms. Leger's testimony was that you
4 could not determine what was paid or credited by the
5 documentation that was provided to us.

6 MR. FOX: Well, then this should have been
7 addressed in a motion to compel in advance of the trial, Your
8 Honor. We shouldn't be rearguing --

9 THE COURT: Right. The objection is overruled.
10 Continue, please.

11 MR. GORDON: Thank you, Your Honor.

12 BY MR. GORDON:

13 Q Now, you were aware that retros were in effect between
14 1974 and 1995?

15 A Yes.

16 Q It's interesting. You heard Mr -- by the way, you were
17 the global underwriter for Royal?

18 A No. I was a referral underwriter.

19 Q Okay. And as such, would you have some control over the
20 underwriting file for Royal, for Latrobe, rather?

21 A The direct underwriting file, no.

22 Q Who would have had that?

23 A That would have been with the underwriter in Pittsburgh
24 or New York, depending on what year and where it was being
25 handled at the time.

1 Q Was that ever produced?

2 A The underwriting files?

3 Q Yes.

4 A To the best of my knowledge, yes.

5 Q And to whom and by whom?

6 A You would have to ask our attorney.

7 Q Is the premium ledger? Are the premium ledgers that
8 document what has been received and paid, credited to an
9 account, is that the business record that is retained by
10 Royal that is used to reference them?

11 Is that the document that's kept in the regular
12 course of business by Royal to demonstrate credits and
13 payments?

14 A There is not a document -- maybe you need to understand
15 how the money flows.

16 The money comes into the bank. The money -- the
17 checks are deposited in the bank. What is deposited is
18 transmitted to us electronically with whatever data, document
19 back-up that they have. We will then go in and credit
20 against what we know we have billed, the appropriate numbers.

21 Like, for example, if it came in from a broker and
22 they said this is paying for policy A, B, C, X, Y, Z and, one
23 two, three --

24 Q Right.

25 A -- then we would apply that against those policies.

1 Q Have you reviewed those documents in preparation for
2 today's testimony?

3 A No. I --

4 Q Did you have any discussions with Jerry Chimenti between
5 July 10, 2003, and September 16, 2003, wherein he indicated
6 to you that he needed some additional documentation to
7 establish how much money had actually been paid and credited?

8 A I don't -- I don't believe I ever spoke to Mr. Chimenti
9 until shortly before phase one of the trial.

10 Q Did you review his deposition testimony in this
11 proceeding where he indicated that he got information from
12 you?

13 A From me or from Royal?

14 Q From Diane Leger.

15 A I don't remember. Bruce could have asked me for
16 something and I could have given it to him and maybe he
17 provided it to Jerry. I don't know.

18 Q Did you provide Mr. Fox or Mr. Leger with any
19 documentation, other than the document that's been
20 referenced, which provides a summary of the account?

21 I am sorry. Let me withdraw that question. Oh, I
22 am sorry.

23 Did you provide, Ms. Leger -- do you recall
24 providing -- after you testified, did you provide any
25 additional documentation either to Mr. Fox or Mr. Chimenti?

1 A Relating to?

2 Q Premiums, credits, financials.

3 A I believe this statement of account, we updated it. I
4 provided that to them.

5 Q Anything else?

6 A I honestly don't recall.

7 Q You are not, nor have you ever been, the custodian of
8 the financial records that would have reflected payments and
9 credits from Latrobe?

10 A No, I'm not.

11 Q You are not the custodian of records of loss runs?

12 A No.

13 Q You didn't prepare any of the loss runs in this case?

14 A No, I did not.

15 Q Did you advise Mr. Chimenti, or someone acting on his
16 behalf, that he needed to secure relevant information from
17 the Premium Account Service Center if he wanted to understand
18 more about the financials of the program?

19 A I'm not sure I understand your financials of the
20 program.

21 Q What's been paid, billed, received, was that something
22 that you directed Chimenti to the Premium Account Service
23 Center for?

24 A I -- if he asked me questions about that, yes, I
25 probably would have sent him to PASC.

1 Q Would the Royal earned premium ledgers, if you took the
2 time to go through that information, establish monies that
3 are paid by an insured directly to Royal?

4 A You keep referring to this like it's a single document
5 for one person, and it was electronic data that was fed to us
6 and, yes, we matched it up, client to payment or policy to
7 payment is more what came in. Yes.

8 Q It would also tell us what was paid on behalf of an
9 insured by a broker or a factor?

10 A Yes.

11 Q And it would also allow us to take into consideration
12 what was drawn down in some form of a collateral?

13 A That would not show up in the premium record.

14 Q Where would that be?

15 A It would show up as a journal entry in the premium
16 record if we had drawn on a letter of credit.

17 The letter of credit draw would be information --
18 information would have been kept in Financial Services.

19 Q Is that your department?

20 A No. Mr. Gordon, if it helps you understand, we were an
21 organization of over seven thousand people at the time we
22 were writing Latrobe --

23 Q I do. But, if it helps you understand, these were
24 documents that had been requested since discovery's inception
25 in this case in 2000. But, you didn't know about that until

1 the day before your deposition, is that right?

2 In other words, you weren't informed that we were
3 looking for documents that were specifically on the notice of
4 deposition until the day before your deposition.

5 Do you recall testifying to that?

6 A Me, personally?

7 Q Yes.

8 A No, I did not.

9 Q Do you recall testifying to that?

10 A I believe I said something to that nature.

11 Q Do you recall also indicating that if the documents were
12 available, you would look for them and then make them
13 available?

14 A Yes, I did.

15 Q And you have never made those documents available?

16 A They weren't available in terms of anything that could
17 be provided to you.

18 MR. GORDON: I have no further questions.

19 MR. FOX: I have no further questions.

20 MR. GORDON: Your Honor, I would like to offer into
21 the record the deposition testimony of Dianne Leger, who has
22 been offered as a corporate designee for Royal. It covers a
23 lot of issues that I am not going to spend an inordinate
24 amount of time with today, but it has been covered, okay, and
25 I would offer that as BB.

1 Can I give you a copy of the original?

2 THE COURT: Yes. Any objection, Mr. Fox?

3 MR. FOX: I have no objection, Your Honor.

4 THE COURT: All right. The offer will be admitted.

5 What about exhibit BA, Mr. Gordon?

6 MR. GORDON: It's a statement of account. I am
7 sorry, Your Honor. It is attached to the deposition
8 transcript of -- thank you, David -- it's attached to the
9 deposition transcript of Dianne Leger.

10 MR. FOX: Is it on your copy? Because it is not on
11 the copy I got.

12 MR. GORDON: Oh, I'm sorry. I'll offer it. I
13 thought it was.

14 And, Your Honor, also, actually, I know what it
15 was. It was an action which was the notice of deposition
16 with request for documents, Your Honor, which was part of it.

17 THE COURT: All right.

18 MR. FOX: No objection.

19 THE COURT: All right. These documents are
20 admitted into evidence.

21 THE COURT: Mr. Fox.

22 MR. FOX: Your Honor, we rest.

23 THE COURT: Mr. Gordon.

24 MR. GORDON: Go ahead.

25 MR. SMITH: Your Honor, at this time, we make a

1 motion to strike the testimony of Gerald Chimenti as lacking
2 the appropriate factual foundation pursuant to the Federal
3 Rule of Evidence 702.

4 Mr. Chimenti testified that to reach his opinion,
5 he believed that the loss runs were authentic, were
6 reasonable, were accurate, that the summary that he relied
7 upon was accurate and was authenticated.

8 Royal has not produced that information or that
9 evidence to support the factual foundation for Mr. Chimenti.
10 Once we receive the court transcript of the proceedings of
11 yesterday, we will be happy to brief this issue.

12 MR. FOX: Your Honor, we oppose the motion. I
13 believe there has been ample evidence presented documenting
14 the loss runs and their accuracy and documenting
15 Mr. Chimenti's opinion.

16 He looked at a tremendous volume of information
17 over an extended period of time and the information that he
18 relied upon consists of the business records.

19 There has been no significant attack on his
20 credibility or the reliability of the documents that he
21 looked at to formulate his opinion, and we would certainly
22 oppose the motion, and would also prepare responsive brief if
23 the motion is filed based upon the record.

24 THE COURT: All right. The Court will issue an
25 order with respect to your motion. Okay.

1 MR. GORDON: Your Honor, I would just, in the
2 interest of truth, I would like to ask that Mr. --

3 THE COURT: Hey, in the interest of truth. I like
4 that.

5 MR. GORDON: Borrowing from yesterday, Your Honor.

6 But, I would like to have Mr. Chimenti called as a
7 witness for one question.

8 THE COURT: All right. You remain under oath,
9 Mr. Chimenti.

10 THE WITNESS: Yes, sir, Your Honor.

11 * * * * *

12 GERALD CHIMENTI, having first been duly sworn,
13 testified as follows:

DIRECT EXAMINATION

15 BY MR. GORDON:

16 Q Mr. Chimenti, in response to questions yesterday, you
17 made certain assumptions as to what Mr. Raabe had and was
18 basing his opinions upon.

19 Do you recall that?

20 A Could you be more specific about that?

21 Q Yes. You had indicated that you assumed that Mr. Raabe
22 had more information than you and had documents and was
23 basing his opinions on perhaps more information that had been
24 made available to you.

25 Do you recall that?

1 A I believe when I was answering that there was
2 information in his report where he made conclusions in his
3 report, that was more information than I had available to me.

4 Q Or that you discerned from the records that were
5 provided to you?

6 A I don't -- I did not have that information provided to
7 me.

8 Q You said you had many, many boxes of documents and you
9 can't recall all of what you had to review?

10 A I don't remember seeing the sort of information in the
11 boxes that I reviewed that Mr. Raabe had in his report.

12 Q But, you quoted from his report yesterday upon what you
13 assumed that he would have relied upon to establish the
14 calculation of premium and specifically the total incurred
15 values, correct?

16 A Yes. I indicated that his retrospective rating
17 calculations were very closely accurate to both my
18 calculations and also Royal's.

19 Q Right. And it's just simply a math exercise, isn't it?
20 If the total incurred values are correct, then you
21 would expect that anybody who is involved as a consultant
22 should be able to calculate premium?

23 A As long as you are using the same information, yes.

24 Q Right. And, in fact, doesn't he indicate in his report
25 in all instances the Royal incurred claim values reduce the

1 workers' compensation values established from the February,
2 2002 adjustments for all periods, which is the adjustment
3 that had been made available by Royal?

4 Doesn't he say that?

5 A I have to take a look. Yes. When he prepared his
6 calculations, he used the incurred values from the February,
7 2002 loss runs.

8 Q That's what you did, right?

9 A I used the loss runs, yes.

10 MR. GORDON: No further questions.

11 MR. FOX: No further questions.

12 THE COURT: All right. Thank you, Mr. Chimenti.
13 You may step down.

14 (The witness was excused.)

15 MR. GORDON: Your Honor, we would rest.

16 THE COURT: Okay. Anything further, Mr. Fox?

17 MR. FOX: Nothing further, Your Honor.

18 THE COURT: Okay. With respect to your 702 motion,
19 how long will it take you to prepare a brief?

20 MR. GORDON: Your Honor, if we could have ten days
21 from the date that Mr. Powers gets the transcripts to us.

22 THE COURT: That won't be for another two months.

23 MR. GORDON: No. He told us he could do this
24 imminently because he likes all of us here.

25 Your Honor, could we have, say, twenty-one days?

1 THE COURT: I am going to confer with my associate
2 here. How much time do you need?

3 MR. GORDON: I was thinking perhaps three weeks,
4 assuming that I can get it in a week.

5 MR. FOX: Your Honor, we can certainly respond very
6 expeditiously. I would like a briefing schedule that's
7 reasonable accelerated.

8 If we could ask Mr. Gordon to do it in ten days, I
9 would think that would be sufficient. This hearing has not
10 been that long.

11 MR. GORDON: It's hard for me to do it, Your Honor,
12 in light of the fact that I don't want to put a gun to the
13 Court Reporter's head.

14 THE COURT: Well, he is going to -- Mr. Powers said
15 he will have it done within a week.

16 MR. GORDON: How about ten days thereafter?

17 THE COURT: All right. Ten days after that then.
18 You have ten days to respond.

19 MR. FOX: That is fine, Your Honor.

20 THE COURT: Okay. All right. David asked whether
21 or not -- I think we've asked for this before, but do you
22 want to present proposed findings, either side?

23 MR. GORDON: It would probably make sense in
24 keeping what we had done before.

25 THE COURT: All right.

1 MR. FOX: We can do that, Your Honor. Again, we
2 would like to do it on an expedited basis, if we could.

3 THE COURT: All right. We'll enter an order with
4 respect to the proposed findings. Okay.

5 MR. GORDON: Thank you, Your Honor.

6 MR. FOX: Thank you, Your Honor.

7 (Court adjourned on Wednesday, May 3rd, 2006, at 10:45 a.m.)

8

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* * * * *

10 I certify that the forgoing is a correct transcript
11 from the record of proceedings in the above-entitled matter.

12 *Michael D. Powers*

13 S/Michael D. Powers
14 Michael D. Powers
15 Official Reporter

16 *****NOT CERTIFIED WITHOUT ORIGINAL SIGNATURE*****

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